

# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
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RM-9060

## **PLEADING CYCLE ESTABLISHED FOR COMMENTS ON PETITION FOR RULEMAKING TO AMEND PARTS 21 AND 74 OF THE COMMISSION'S RULES TO ENHANCE THE ABILITY OF MULTIPOINT DISTRIBUTION SERVICE AND INSTRUCTIONAL TELEVISION FIXED SERVICE LICENSEES TO ENGAGE IN FIXED TWO-WAY TRANSMISSIONS**

On March 14, 1997, a group of over 100 participants in the wireless cable industry ("Petitioners") filed a petition for rulemaking, in which they propose to amend Parts 21 and 74 of the Commission's rules to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed two-way digital transmissions. Petitioners are composed of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations.

Petitioners argue that there is insufficient spectrum currently available for communications links (return paths) to MDS and ITFS stations from subscribers or other remote locations, and that that spectrum is improperly channelized in a way that prevents a single operator from assembling a contiguous frequency band for this purpose. Thus, Petitioners seek technical rule changes designed to afford MDS and ITFS licensees the flexibility to implement spectrally efficient two-way digital transmission techniques using their existing channels, provided that no harmful interference is caused as a result. Petitioners propose to use some or all of MDS and ITFS licensees' 6 MHz channels for return links from subscribers, to cellularize transmission systems, and to use subchannels (the transmission of multiple signals over a single channel) or superchannels (the transmission of a single signal over multiple adjacent channels) for digital transmissions in either direction. Petitioners establish a standard methodology for evaluating the potential for harmful interference from multiple subscriber locations transmitting simultaneously, and they assert that the results of recent field tests show that the techniques described above may be introduced on MDS and ITFS channels without causing harmful interference. Petitioners also propose rules that will provide BTA authorization holders, incumbent MDS licensees, and ITFS licensees who engage in two-way operations with interference protection for return path links akin to that which they are currently provided in point-to-multipoint transmissions.

Petitioners contemplate that the new rules would be applied in a manner consistent with the Commission's Declaratory Ruling on the use of digital modulation by MDS and ITFS stations, FCC 96-304 (released July 10, 1996) (petitions for clarification and partial reconsideration pending) ("*Digital Declaratory Ruling*"), and the proposed rules are designed also to accommodate digital modulation schemes other than those approved in the *Digital Declaratory Ruling*. Petitioners suggest that the Commission use a rolling, one-day filing window system to

govern the filing of applications for new or modified response station hubs or boosters. Applications would be granted automatically after a 60-day waiting period following public notice, unless a petition to deny was filed or the Commission otherwise notified the applicant prior to that date. Petitioners envision that neighboring licensees usually will negotiate in good faith, as required by Sections 21.902(b)(2), 21.938(a), and 74.903(c) of the Commission's rules, and enter into private agreements governing design of adjacent systems, so that "the only time the staff will be required to review the complex interference studies would be in those situations where the applicant could not secure consent to its proposal, and a petition to deny is filed." In order to smooth the transition to this rolling, one-day filing window application processing system, Petitioners also propose that the Commission employ a special one-week window and an application amendment period when the new rules first take effect.

Petitioners further assert that the Commission must revise its ITFS channel loading and channel mapping rules. Petitioners anticipate that system developers will attempt to realize the efficiencies involved in utilizing contiguous 6 MHz channels for two-way services, and that entire ITFS channel groups may need to be devoted for return paths, depending on the demand for two-way services. Thus, Petitioners emphasize their proposal to amend Section 74.931(e)(9) of the Commission's rules to allow ITFS licensees, at their sole discretion, to satisfy their minimum programming requirements on other channels within the wireless cable system, and not mandate that licensees meet these requirements using at least one of their own channels.

Petitioners contend that consumers will be attracted to the ability to secure both video programming and access to the Internet and other data sources from a single vendor, and that some video programming distributors are either already offering such services or will be doing so in the near future, so that wireless cable operators must provide interactive communications services in order to compete and survive in the multichannel video programming marketplace. Petitioners add that bolstering the competitive viability of the wireless cable service is in the public interest. Petitioners also maintain that by adopting their proposed rules, the Commission will advance the "national goal" of providing schools with high-speed access to the Internet. Petitioners assert that the proposed rule changes are necessary because while the Commission's rules authorize MDS and ITFS licensees to utilize microwave spectrum for return paths, *see* 47 C.F.R. §§ 21.901(b)(4) and (5), 21.903(a), and 74.939, the current framework for doing so, in which the Commission issues short-term developmental authorizations or individually licenses return links, is expensive, cumbersome, and places wireless cable operators at a competitive disadvantage with respect to other video programming distributors not subject to such limitations.

Interested parties should file comments on this petition by April 30, 1997, and reply comments by May 15, 1997, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. The caption should reference RM-9060. We also invite parties to comment on whether and how the Commission can amend its rules to permit even broader flexibility than suggested by Petitioners. A copy of any comments or reply comments also should be sent to Michael J. Jacobs, Mass Media Bureau, FCC, 2033 M Street, N.W., Suite 600, Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the above-referenced filings will be available for public inspection in Room 207, 2033 M Street, N.W., Washington, D.C. and also may be obtained from ITS at (202) 857-3800. For further information, please contact Charles E. Dziedzic at (202) 418-1600 or Michael J. Jacobs at (202) 418-7066.